

1 Plaintiff JONATHAN PAYTON (“Plaintiff”), individually and on behalf of
 2 all others similarly situated, alleges the following upon information and belief
 3 based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
 6 similarly situated seeking damages and any other available legal or equitable
 7 remedies resulting from the illegal actions of BIDDING UNLIMITED
 8 INCORPORATED DBA BIDZ.COM (“Defendant”), in negligently, knowingly,
 9 and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of
 10 the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and
 11 related regulations, specifically the National Do-Not-Call provisions, thereby
 12 invading Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
 15 a resident of California, seeks relief on behalf of a Class, which will result in at
 16 least one class member belonging to a different state than that of Defendant, a
 17 Delaware company. Plaintiff also seeks up to \$1,500.00 in damages for each call
 18 in violation of the TCPA, which, when aggregated among a proposed class in the
 19 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
 20 Therefore, both diversity jurisdiction and the damages threshold under the Class
 21 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

22 3. Venue is proper in the United States District Court for the Central
 23 District of California pursuant to 28 U.S.C. 1391(b) and because Defendant does
 24 business within the State of California and Plaintiff resides within the County of
 25 Los Angeles.

26 **PARTIES**

27 4. Plaintiff, JONATHAN PAYTON (“Plaintiff”), is a natural person
 28 residing in Los Angeles, California and is a “person” as defined by 47 U.S.C. § 153

1 (39).

2 5. Defendant, BIDDING UNLIMITED INCORPORATED DBA
3 BIDZ.COM (“Defendant”) is business lending company, and is a “person” as
4 defined by 47 U.S.C. § 153 (39).

5 6. The above named Defendant, and its subsidiaries and agents, are
6 collectively referred to as “Defendants.” The true names and capacities of the
7 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
8 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
9 names. Each of the Defendants designated herein as a DOE is legally responsible
10 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
11 Complaint to reflect the true names and capacities of the DOE Defendants when
12 such identities become known.

13 7. Plaintiff is informed and believes that at all relevant times, each and
14 every Defendant was acting as an agent and/or employee of each of the other
15 Defendants and was acting within the course and scope of said agency and/or
16 employment with the full knowledge and consent of each of the other Defendants.
17 Plaintiff is informed and believes that each of the acts and/or omissions complained
18 of herein was made known to, and ratified by, each of the other Defendants.

19 **FACTUAL ALLEGATIONS**

20 8. Beginning in or around June 2017, Defendant contacted Plaintiff on
21 Plaintiff’s cellular telephone number ending in -6737, in an attempt to solicit
22 Plaintiff to purchase Defendant’s services.

23 9. Defendant used an “automatic telephone dialing system” as defined
24 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

25 10. Defendant contacted or attempted to contact Plaintiff from telephone
26 number (310) 855-3323.

27 11. Defendant’s calls constituted calls that were not for emergency
28 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

1 12. Defendant's calls were placed to telephone number assigned to a
2 cellular telephone service for which Plaintiff incurs a charge for incoming calls
3 pursuant to 47 U.S.C. § 227(b)(1).

4 13. During all relevant times, Defendant did not possess Plaintiff's "prior
5 express consent" to receive calls using an automatic telephone dialing system or an
6 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
7 227(b)(1)(A).

8 14. Further, Plaintiff's cellular telephone number ending in -6737 was
9 added to the National Do-Not-Call Registry on or about November 28, 2014.

10 15. Defendant placed at least one call soliciting its business to Plaintiff on
11 his cellular telephone ending in -6737 in or around June 2017.

12 16. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
13 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

14 17. Plaintiff received at least one solicitation calls from Defendant within
15 a 12-month period.

16 18. Plaintiff requested for Defendant to stop calling Plaintiff during one
17 of the initial calls from Defendant, thus revoking any prior express consent that had
18 existed and terminating any established business relationship that had existed, as
19 defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

20 19. Defendants call to Plaintiff in an attempt to solicit its services was in
21 violation of the National Do-Not-Call provisions of the TCPA.

22 20. Upon information and belief, and based on Plaintiff's experiences of
23 being called by Defendant, and at all relevant times, Defendant failed to establish
24 and implement reasonable practices and procedures to effectively prevent
25 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §
26 227(c)(5).

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CLASS ALLEGATIONS

21. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

22. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior express consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint.

23. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received

1 more than one call made by or on behalf of Defendant
2 that promoted Defendant's products or services, within
3 any twelve-month period, within four years prior to the
4 filing of the complaint.

5 24. The class concerning the National Do-Not-Call violation following
6 revocation of consent and prior business relationship, to the extent they existed
(hereafter "The DNC Revocation Class") is defined as follows:

7 All persons within the United States registered on the
8 National Do-Not-Call Registry for at least 30 days, who
9 received more than one call made by or on behalf of
10 Defendant that promoted Defendant's products or
11 services, after having revoked consent and any prior
12 established business relationship, within any twelve-
13 month period, within four years prior to the filing of the
14 complaint.

15 25. Plaintiff represents, and is a member of, The ATDS Class, consisting
16 of all persons within the United States who received any solicitation telephone calls
17 from Defendant to said person's cellular telephone made through the use of any
18 automatic telephone dialing system or an artificial or prerecorded voice and such
19 person had not previously not provided their cellular telephone number to
20 Defendant within the four years prior to the filing of this Complaint.

21 26. Plaintiff represents, and is a member of, The ATDS Revocation Class,
22 consisting of all persons within the United States who received any
23 solicitation/telemarketing telephone calls from Defendant to said person's cellular
24 telephone made through the use of any automatic telephone dialing system or an
25 artificial or prerecorded voice and such person had revoked any prior express
26 consent to receive such calls prior to the calls within the four years prior to the
27 filing of this Complaint.

28 27. Plaintiff represents, and is a member of, The DNC Class, consisting
of all persons within the United States registered on the National Do-Not-Call

1 Registry for at least 30 days, who had not granted Defendant prior express consent
2 nor had a prior established business relationship, who received more than one call
3 made by or on behalf of Defendant that promoted Defendant's products or services,
4 within any twelve-month period, within four years prior to the filing of the
5 complaint.

6 28. Plaintiff represents, and is a member of, The DNC Revocation Class,
7 consisting of all persons within the United States registered on the National Do-
8 Not-Call Registry for at least 30 days, who received more than one call made by or
9 on behalf of Defendant that promoted Defendant's products or services, after
10 having revoked consent and any prior established business relationship, within any
11 twelve-month period, within four years prior to the filing of the complaint.

12 29. Defendant, its employees and agents are excluded from The Classes.
13 Plaintiff does not know the number of members in The Classes, but believes the
14 Classes members number in the thousands, if not more. Thus, this matter should
15 be certified as a Class Action to assist in the expeditious litigation of the matter.

16 30. The Classes are so numerous that the individual joinder of all of its
17 members is impractical. While the exact number and identities of The Classes
18 members are unknown to Plaintiff at this time and can only be ascertained through
19 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
20 The Classes includes thousands of members. Plaintiff alleges that The Classes
21 members may be ascertained by the records maintained by Defendant.

22 31. Plaintiff and members of The ATDS Class and The ATDS Revocation
23 Class were harmed by the acts of Defendant in at least the following ways:
24 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
25 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
26 members to incur certain charges or reduced telephone time for which Plaintiff and
27 ATDS Class and ATDS Revocation Class members had previously paid by having
28 to retrieve or administer messages left by Defendant during those illegal calls, and

1 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
2 members.

3 32. Common questions of fact and law exist as to all members of The
4 ATDS Class which predominate over any questions affecting only individual
5 members of The ATDS Class. These common legal and factual questions, which
6 do not vary between ATDS Class members, and which may be determined without
7 reference to the individual circumstances of any ATDS Class members, include,
8 but are not limited to, the following:

- 9 a. Whether, within the four years prior to the filing of this
10 Complaint, Defendant made any telemarketing/solicitation call
11 (other than a call made for emergency purposes or made with
12 the prior express consent of the called party) to a ATDS Class
13 member using any automatic telephone dialing system or any
14 artificial or prerecorded voice to any telephone number
15 assigned to a cellular telephone service;
- 16 b. Whether Plaintiff and the ATDS Class members were damaged
17 thereby, and the extent of damages for such violation; and
- 18 c. Whether Defendant should be enjoined from engaging in such
19 conduct in the future.

20 33. As a person that received numerous telemarketing/solicitation calls
21 from Defendant using an automatic telephone dialing system or an artificial or
22 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
23 claims that are typical of The ATDS Class.

24 34. Common questions of fact and law exist as to all members of The
25 ATDS Revocation Class which predominate over any questions affecting only
26 individual members of The ATDS Revocation Class. These common legal and
27 factual questions, which do not vary between ATDS Revocation Class members,
28 and which may be determined without reference to the individual circumstances of

any ATDS Revocation Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with the prior express consent of the called party) to an ATDS Revocation Class member, who had revoked any prior express consent to be called using an ATDS, using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiff and the ATDS Revocation Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

35. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff is asserting claims that are typical of The ATDS Revocation Class.

36. Plaintiff and members of The DNC Class and DNC Revocation Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class and DNC Revocation Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class and DNC Revocation Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class and DNC Revocation Class members were damaged thereby.

37. Common questions of fact and law exist as to all members of The

1 DNC Class which predominate over any questions affecting only individual
2 members of The DNC Class. These common legal and factual questions, which do
3 not vary between DNC Class members, and which may be determined without
4 reference to the individual circumstances of any DNC Class members, include, but
5 are not limited to, the following:

- 6 a. Whether, within the four years prior to the filing of this
7 Complaint, Defendant or its agents placed more than one
8 solicitation call to the members of the DNC Class whose
9 telephone numbers were on the National Do-Not-Call Registry
10 and who had not granted prior express consent to Defendant and
11 did not have an established business relationship with
12 Defendant;
- 13 b. Whether Defendant obtained prior express written consent to
14 place solicitation calls to Plaintiff or the DNC Class members'
15 telephones;
- 16 c. Whether Plaintiff and the DNC Class member were damaged
17 thereby, and the extent of damages for such violation; and
- 18 d. Whether Defendant and its agents should be enjoined from
19 engaging in such conduct in the future.

20 38. As a person that received numerous solicitation calls from Defendant
21 within a 12-month period, who had not granted Defendant prior express consent
22 and did not have an established business relationship with Defendant, Plaintiff is
23 asserting claims that are typical of the DNC Class.

24 39. Common questions of fact and law exist as to all members of The
25 DNC Class which predominate over any questions affecting only individual
26 members of The DNC Revocation Class. These common legal and factual
27 questions, which do not vary between DNC Revocation Class members, and which
28 may be determined without reference to the individual circumstances of any DNC

1 Revocation Class members, include, but are not limited to, the following:

- 2 a. Whether, within the four years prior to the filing of this
- 3 Complaint, Defendant or its agents placed more than one
- 4 solicitation call to the members of the DNC Class whose
- 5 telephone numbers were on the National Do-Not-Call Registry
- 6 and who had revoked any prior express consent and any
- 7 established business relationship with Defendant;
- 8 b. Whether Plaintiff and the DNC Class member were damaged
- 9 thereby, and the extent of damages for such violation; and
- 10 c. Whether Defendant and its agents should be enjoined from
- 11 engaging in such conduct in the future.

12 40. As a person that received numerous solicitation calls from Defendant
 13 within a 12-month period, who, to the extent one existed, had revoked any prior
 14 express consent and any established business relationship with Defendant, Plaintiff
 15 is asserting claims that are typical of the DNC Revocation Class.

16 41. Plaintiff will fairly and adequately protect the interests of the members
 17 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
 18 class actions.

19 42. A class action is superior to other available methods of fair and
 20 efficient adjudication of this controversy, since individual litigation of the claims
 21 of all Classes members is impracticable. Even if every Classes member could
 22 afford individual litigation, the court system could not. It would be unduly
 23 burdensome to the courts in which individual litigation of numerous issues would
 24 proceed. Individualized litigation would also present the potential for varying,
 25 inconsistent, or contradictory judgments and would magnify the delay and expense
 26 to all parties and to the court system resulting from multiple trials of the same
 27 complex factual issues. By contrast, the conduct of this action as a class action
 28 presents fewer management difficulties, conserves the resources of the parties and

1 of the court system, and protects the rights of each Classes member.

2 43. The prosecution of separate actions by individual Classes members
3 would create a risk of adjudications with respect to them that would, as a practical
4 matter, be dispositive of the interests of the other Classes members not parties to
5 such adjudications or that would substantially impair or impede the ability of such
6 non-party Class members to protect their interests.

7 44. Defendant has acted or refused to act in respects generally applicable
8 to The Classes, thereby making appropriate final and injunctive relief with regard
9 to the members of the Classes as a whole.

10 **FIRST CAUSE OF ACTION**

11 **Negligent Violations of the Telephone Consumer Protection Act**

12 **47 U.S.C. §227(b).**

13 **On Behalf of the ATDS Class and ATDS Revocation Class**

14 45. Plaintiff repeats and incorporates by reference into this cause of action
15 the allegations set forth above at Paragraphs 1-44.

16 46. The foregoing acts and omissions of Defendant constitute numerous
17 and multiple negligent violations of the TCPA, including but not limited to each
18 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
19 *47 U.S.C. § 227 (b)(1)(A)*.

20 47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
21 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
22 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

23 48. Plaintiff and the ATDS Class and ATDS Revocation Class members
24 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

25 **SECOND CAUSE OF ACTION**

26 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

27 **Act**

28 **47 U.S.C. §227(b)**

On Behalf of the ATDS Class and the ATDS Revocation Class

49. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-44.

50. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

51. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

52. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

53. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-44.

54. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

55. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

56. Plaintiff and the DNC Class and DNC Revocation Class members are

1 also entitled to and seek injunctive relief prohibiting such conduct in the future.

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4 **FOURTH CAUSE OF ACTION**

5 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
6 **Act**

7 **47 U.S.C. §227 et seq.**

8 **On Behalf of the DNC Class and DNC Revocation Class**

9 57. Plaintiff repeats and incorporates by reference into this cause of action
10 the allegations set forth above at Paragraphs 1-44.

11 58. The foregoing acts and omissions of Defendant constitute numerous
12 and multiple knowing and/or willful violations of the TCPA, including but not
13 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
14 in particular *47 U.S.C. § 227 (c)(5)*.

15 59. As a result of Defendant's knowing and/or willful violations of *47*
16 *U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members
17 are entitled an award of \$1,500.00 in statutory damages, for each and every
18 violation, pursuant to *47 U.S.C. § 227(c)(5)*.

19 60. Plaintiff and the DNC Class and DNC Revocation Class members are
20 also entitled to and seek injunctive relief prohibiting such conduct in the future.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

23 **FIRST CAUSE OF ACTION**

24 **Negligent Violations of the Telephone Consumer Protection Act**

25 **47 U.S.C. §227(b)**

- 26 • As a result of Defendant's negligent violations of *47 U.S.C.*
27 *§227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation
28 Class members are entitled to and request \$500 in statutory damages,

for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).

- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation

1 Class members are entitled to and request treble damages, as provided
2 by statute, up to \$1,500, for each and every violation, pursuant to 47
3 *U.S.C. §227(c)(5)*.

- 4 • Any and all other relief that the Court deems just and proper.

5 61. Pursuant to the Seventh Amendment to the Constitution of the United
6 States of America, Plaintiff is entitled to, and demands, a trial by jury.

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9 Respectfully Submitted this 1st Day of May, 2018.

10 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

11 By: /s/ Todd M. Friedman
12 Todd M. Friedman
13 Law Offices of Todd M. Friedman
14 Attorney for Plaintiff
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